IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 665 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PAYALBEN JAYESHBHAI YAGNIK

Versus

JAYESHBHAI G YAGNIK

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Appearance:

MR MAULIK J SHELAT for Petitioner No. 1

MR BHARAT R PATEL for Respondent No. 1

MS MEGHA JANI for Respondent No. 2

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: /11/2002

CAV JUDGEMENT

1. Payalben Jayeshbhai Yagnik, appellant - original applicant has filed this appeal against the judgment and order dated 30th November, 2001, passed by the Motor Accident Claims Tribunal, Ahmedabad in M.A.C.P. No.11/2000. The learned Judge by his impugned judgment was pleased to reject the said application which has been filed under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

2. The facts giving rise to this petition are as

under:-

2.1 The applicant has filed application under Section 140 of the Act to get the compensation amount on the principle of 'no fault liability'. In the said application, it was submitted that on 18th November, 1999, the petitioner met with the accident on the four cross road near Ashwamegh Travels which is situated on the roads proceeding ahead from Vadilal Hospital towards Paldi. The petitioner had suffered grievous injuries and suffered fracture on right leg and she had taken treatment at Dr.Mukesh R.Shah's Orthopaedic Hospital. She has put reliance on the treatment papers issued by the said Doctor. She further submitted the registration number of vehicle which is involved in the accident is GJ-1-B-5063 and the owner of the said vehicle is opponent No.2. The affidavit filed by the petitioner is at Ex.1. She has also filed affidavit at Ex.19.

2.2 Alongwith the said petition, learned advocate for the petitioner has also filed list of documents at Exh.16 and submitted that vide Mark 16/1 the petitioner herself had lodged the complaint dated 1.12.1999 in which the details regarding the accident in question have been narrated at length by the petitioner. She has also produced document at Mark 16/2 certified copy of panchnama of scene of incident. She has also produced document at Mark 16/3 which is original certificate dated 18.11.99 issued by Dr.Mukesh R.Shah, M.S. (Ortho.) of Mahakant Orthopaedic Hospital. She has also produced Mark 16/4 which is the disability certificate issued by Dr.S.G.Patel, M.S.(Ortho.) dated 18.5.2001. She has also produced Mark.16/5 xerox copy of insurance policy of the vehicle bearing Registration No.GJ-1-B-5063. The petitioner has also produced Marks 16/6 to 16/28 original bills of expenses incurred after treatment of the petitioner and the expenditure figure in all shown in the list is Rs.22,099/-.

2.3 The petitioner had also submitted certificate at Mark 16/3 issued by Dr.Mukesh R.Shah dated 18.11.99 and submitted that after the accident the petitioner had been shifted to Mahakant Orthopaedic Hospital. Relying upon the said certificate she submitted that Dr.Mukesh Shah had noted the history regarding the said accident in which it is mentioned that petitioner met with a vehicular accident on 18.11.99 at 10.30 a.m. at Paldi Cross Road near Bonny Ashwamegh Cross road while Kinetic was struck by Bajaj Scooter and petitioner was brought to his hospital at 11.00 a.m. On the basis of the complaint which has been filed at Mark 16/1, she submitted that she

had been discharged from the hospital and as the petitioner has proved that accident had occurred out of the use of motor vehicle, the petitioner is entitled to get Rs.25,000/- under the principle of no fault liability under Section 140 of the Act.

2.4 The opponent No.2 insurance company had filed reply at Exh.18 and also the affidavit of its officer at Ex.21 and submitted that occurrence of the accident narrated in the complaint Mark 16/1 is itself doubtful on bare reading of the same and when the occurrence of accident is not satisfactorily proved by the petitioner, this application is not maintainable, that the application is filed against the owner and insurer of the vehicle bearing registration No.GJ-1-B-5063 which was driven by the petitioner at the time of alleged accident and hence the present application deserves to be dismissed.

2.5 The learned Judge before whom the matter is considered, he has also considered the medical certificate produced at Exh.16/3. From the said certificate the learned Judge observed that nothing has been forthcoming whether the said doctor had inquired that any complaint regarding the alleged vehicular accident had been filed by the petitioner or not. The learned Judge also observed that filing of the late complaint which is alleged is nothing but an afterthought to get compensation and to get the benefit of benevolent fund. The learned Judge also observed that the incident occurred on 18.11.99 whereas the complaint was filed on 1.12.99 and why the complaint filed so late the claimant has not given any explanation in this behalf. The claimant has also not produced any eye witness. According to learned Judge the incident had occurred on 18.11.99 at about 10.30 a.m. in the busy locality of Ahmedabad and for that the claimant has not produced evidence in support of the same.

3. Learned advocate for the appellant has relied upon Chapter - VIIA and Section 92A of Motor Vehicles Act, 1939 (hereinafter referred to as 'Old Act') provides "Liability to pay compensation in certain cases on the principle of no fault. He has also relied upon Section 92B which provides the provisions as to other right to claim compensation for death or permanent disablement. Section 93E provides overriding effect to the provisions of this Act. Chapter VIIA was ushered in with effect from 1-10-1982 by the Act 47 of 1982 as long waited measure of social justice.

3.1 In view of the Section 92A of the Old Act, the maximum no fault liability which earlier found favour in some western countries, was inserted its way into the Motor Vehicles Acts in India. The phenomenal development of road transport and the rapid increase in number of motor vehicles and road accidents, arising out of their use, often leading to serious and sometimes fatal consequences, shock earlier notions of liability. Judicial voices were raised from time to time, having regard to the difficulty in securing adequate evidence to prove negligence and the nature of circumstances in which road accident occurred.

3.2 The object of introducing Section 92A so as to bring about strict enforcement of road safety measures and to provide for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle as well as compensation by way of solatium in cases in which the identity of the vehicle causing an accident was unknown.

3.3 The liability to pay compensation lie with the owner of the vehicle or the owners of the vehicle involved. The liability of the owners is joint as well as several.

3.4 The main principle underlying this subsection was that no matter whether there is any fault or not, if the victim dies, his legal representatives will get Rs.15,000/-, and if the victim is permanently disabled, he will get Rs.7,500/- and all this is in addition to what can be had in a claim under Sections 110A and 110B of the Motor Vehicles Act,1939. (At the relevant time)

3.5 Learned advocate for the appellant has relied upon Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'New Act') corresponding to Sec.92A of the Old Act which reads as under:

"Sec.140 Liability to pay compensation in certain cases on the principle of no fault :- (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles, shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be

payable under sub-section (1) in respect of the death of any person shall be a fixed sum of {fifty} thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five] thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

3.6 Chapter X which provides liability without fault in certain cases and Section 140 of the Act which provides liability to pay compensation in certain cases on the principle of no fault liability. It may be noted that this Section correspondence to Section 92A of the Motor Vehicles Act, 1939. The object of this Section is benevolent legislation for giving speedy remedy to the claimant on account of death in an accident.

3.7 The learned advocate for the appellant has also relied upon the judgment of the Hon'ble Apex Court in the case of K.Nandakumar vs. Managing Director, Thanthai Periyar Transport Corporation Ltd. reported in 1996 ACJ 555 particularly para 4 and 5 which reads as under:

"Para.4 By reason of sub-section (1) of section 92-A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death or permanent disablement resulting from an accident arising out of its use. By reason of sub-section (3), the claimant is not required to plead or establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section

(4) is in two parts. The first part states that a claim for compensation under the section is not defeated by reason of any wrongful act, neglect or default of the person who had died or suffered permanent disablement. The second part states that the quantum of compensation is not to be diminished even if the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

"Para.5 There was, therefore, on a plain reading of section 92-A, particularly the first part of sub-section (4) thereof, no basis for holding that a claim thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent. The provision being clear, no external aid to its construction, such as the Statement of Objects and Reasons, was called for."

3.7(A) Thereafter the Hon'ble Supreme Court has allowed the appeal and held that the appellant is entitled to compensation under Sec.92-A of the Act.

3.8 He has also relied upon the judgment of the Hon'ble Supreme Court in the case of Oriental Insurance Co.Ltd vs. Hansrajbhai V.Kodala and others reported in (2001) 5 SCC 175 where the Hon'ble Supreme Court has considered Sec.163-A of the ACt. While construing Sec.163-A of the Act, the Hon'ble Apex Court in para 16 has observed like this:

"para 16 The aforesaid conclusion gets support from the language used in Sections 140, 141, 161 and 163-A. Sections 140 to 143 provide for liability of the owner of the vehicle in case of death or permanent disablement of any person resulting from an accident arising out of use of a motor vehicle or motor vehicles, to pay compensation without any pleading or establishing that death or permanent disablement was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles."

3.9 Learned advocate for the appellant has also stated that thereafter the Hon'ble Apex Court has observed in relation to Sec.163-A of the Act and that observation may also apply in this case because the purpose of legislation is to give quick relief in this behalf.

3.10 Learned advocate for the appellant has also relied upon the judgment of this Court in the case of New India Assurance Co.Ltd. vs. Mithakhan Dinakhan Notiyar and others reported in 1995(2) G.L.R. 1111. He has relied upon para 6 of the judgment which reads as under:

"para 6. Section 140 provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. the amount of compensation which is payable thereunder in respect of death of any person is a fixed sum of Rs.25,000/- (Rupees twenty-five thousand) and the amount of compensation payable in respect of the permanent disablement of any person is a fixed sum of Rs.12,000/- (Rupees twelve thousand). Sub-sec.(3) of Sec.140 provides that in any claim for compensation under sub-sec.(1) of Sec.140, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is, thus, that to a limited extent relief has been granted under Sec.140 of the Act to the victim who has suffered permanent disablement. Such victim can claim Rs.12,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for permanent disablement caused on account of a motor vehicle accident. To that extent substantive law of the Country stands modified. There is no manner of doubt that Sec.140 of the Act is beneficial and social welfare piece of legislation. It is well settled that in construing social welfare legislation, the Courts should adopt a beneficial rule of construction and in any event, that construction should be preferred which fulfils the policy of legislation. The construction to be adopted on a statute should be such so as to

achieve the purpose for which it is enacted and in favour of those in whose interest the Act has been passed. The liability under this section is made indefeasible, peremptory and total. It has been put beyond dispute that insurer is clearly liable under Sec.140 of the Act in view of the provisions contained in Secs. 145 & 147 of the Act.

3.11 Thereafter in para 7 the learned Judge has referred Rule 230 of the Gujarat Motor Vehicles Rules 1989 and after referring to that the Court has held as under:

"... While making an order under Sec.140 of the Act, the Tribunal is not required to follow the procedure contained in Rules 211 to 230 and 232 of the Gujarat Motor Vehicles Rules, 1989. Where compensation is claimed in respect of death of permanent disablement under Sec.140 and also in pursuance of any right on the principle of fault, the claim for compensation under Sec.140 of the Act is required to be disposed of in the first place in view of sub-sec (2) of Sec.140 of the Act. For awarding compensation under Sec.140 of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters:-

(i) an accident has arisen out of the use of a motor vehicle;

(ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;

(iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident."

3.12 Learned advocate for the appellant has also relied upon another judgment of this Court in the case of Anitaben wd/o. Nalinkumar Manubhai Shah and others vs. Abdul Hakim Allarkhan Shaikh and others reported in 1995(1) G.L.R. 479 in support of the aforesaid conclusion also.

3.13 Learned advocate has also invited my attention to the complaint filed by Payalben, panchnama, medical certificate issued by Dr.Shantilal Patel and others in

this behalf.

4. Ms.Megha Jani, learned advocate for the respondents has tried to support the judgment of the tribunal in this behalf.

4.1 Learned advocate for the respondent has cited the judgment of the Division Bench of this Court in the case of United India Insurance Co.Ltd. vs. Jagatsinh Valsinh and others reported in 1986(2) GLR 1423 particularly para 7 which reads as under:

"para.7 The claimant is held to be a tort-feasor. It is beyond comprehension as to how a tort-feasor can be awarded compensation for the tortious act committed by him. If the claimant sustained injuries and suffered disablement as a result of such injuries he has to blame himself for it was his own negligence which caused these injuries. If the claimant was negligent, he cannot come forward and say, "pay me compensation for my own negligence."

CONCLUSION:-

5. I have considered the judgment of the Hon'ble Supreme Court in the case of K.Nandakumar (supra), Oriental Insurance Co. vs. Hansrajbhai V.Kodala (supra), judgment of this Court in the case of New India Assurance Co.Ltd Vs. Mithakhan Dinakhan Notiyar (supra) and another judgment of this Court in the case of Anitaben wd/o. Nalinkumar Manubhai Shah and others Vs. Abdul Hakim (supra) in this behalf and also considered Sec.140 of the Act.

5.1 The provisions of Sec.92-A of the Motor Vehicles Act, 1939 become alive and generate sufficient power to enable jurisdiction to be exercised thereunder to help the hapless and helpless. Relief, according to the contemplation of the Legislature, is to be provided to the widows and orphans quickly and instantly to pre-empt and prevent their destitution and vagrancy and that object of the Legislature can be fulfilled only if the order under Sec.140 is passed imaginatively to ensure the relief to reach quickly, effectively and positively to be destituted.

5.2 It is settled principle of law that the standard for adjudging the guilt of the accused in criminal law is beyond reasonable doubt. In civil cases, the Court can take into consideration for adjudging any issue that

evidence is sufficient on mere preponderance of probabilities. The legislature has provided different standard. Section 140 of the Act on the principle of no fault liability, makes the owner of the vehicle liable for compensation for death even when the accident is not due to the fault of the owner or deriver of the vehicle and even if the accident has taken place due to the fault of the victim. In view thereof, the claimants are entitled to the grant of compensation under 'no fault liability' to the tune of Rs.25,000 under Sec.140 of the Act.

5.3 The no fault provision as it propounded in Section 92-A of Old Act (New Section 140) of the Motor Vehicles Act is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the Courts is to adopt a construction which advances the beneficient purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

5.4 In construing a remedial statute the courts ought to give it "the widest operation which its language will permit. The effect of a beneficial legislation is not construed to be defeated by interpreting in such way and object of the Legislature is not worked upon. The Court must also be vigilant to see that benefits conferred by welfare legislation are not defeated by subtle devices. It is the duty of the Court, in every case where ingenuity is expended to avoid welfare legislations, to get behind the smoke screen and discover the true state of affairs."

5.5 Sec.140 of the Act deals with the liability to pay compensation in certain cases on the principle of no fault liability. It provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles, shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. Sub-section (2) provides for the quantum and sub-section (3) provides that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful

act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

[ Re. New India Assurance Co. Ltd. v. Jayrambhai Fulabhat Vachant Suragpara reported in 1999(1) T.A.C. 250 at p. 252 (Guj).]

5.6 In this case the tribunal has to come to conclusion on the material on record and prima facie satisfied itself that (i) the accident has arisen out of the use of the motor vehicle (ii) the said accident has resulted in a permanent disablement of the person who is making the claim or the death of a person whose legal representatives are making the claim and (iii) the claim is made against the owner and insurer of the motor vehicle involved in the accident. This is so because irrespective of any fault, the legal representatives of the dead persons or the person who had suffered a permanent disablement are to be given a quick and effective temporary relief.

5.7 I have considered the judgment of Division Bench of this Court in the case of United India Insurance Co.Ltd (supra). However, that judgment is prior to enactment of Sec.140 of the present Act and, therefore, the same decision is not applicable to the present case.

6. In my view the learned Judge ought to have seen only that the accident had arisen out of the use of the motor vehicle; the said accident had resulted in permanent disability of the person whose making claim and the claim is made against the owner and insurer of the motor vehicle involved in the accident. In this case the petitioner had satisfied all the three conditions and therefore his application under Sec.140 of the Act is maintainable at law. The learned Judge has only carried out inquiry which is dehors the provisions of law. In view of the same, the learned Judge has not properly considered Sec.140 of the Act in the context of the fact narrated by the petitioner in this behalf.

7. In view of the same, the judgment and award of the tribunal dated 30th November, 2001, is quashed and set aside. In view of the same the application filed by the claimant under Sec.140 of the Act is allowed. The respondent No.2 insurance company is directed to deposit Rs.25,000/alongwith 9% interest from the date of the application i.e. 8th March, 2000, within two months. After the said amount is deposited, the tribunal will disburse the same in favour of the claimant after duly verifying the identity of the claimant. In view of the

same, the appeal is accordingly disposed of with no order as to costs.

(K.M. Mehta, J.)

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